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**DATE:** October 31, 2006  
**FILE NO:** ROC920000234US1 (IBM2K0234.Y1)  
**TO:** MAIL STOP APPEAL BRIEF - PATENTS  
Examiner Ngoc K. Vu  
**FAX NO:** 1-571-273-8300  
**FROM:** Gero G. McClellan / David M. Magness  
**PAGE(S) with cover:** 7

**RE:**

**TITLE:** Method and System for Pricing a Programming Event Viewed by Subscriber Group  
**U.S. SERIAL NO.:** 09/749,106  
**FILING DATE:** December 27, 2000  
**INVENTOR(S):** Bates et al.  
**EXAMINER:** Ngoc K. Vu  
**GROUP ART UNIT:** 2611  
**CONFIRMATION NO.:** 6268

Attached are the following document(s) for the above-referenced application:

REPLY BRIEF

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:  
Bates et al.

Serial No.: 09/749,106

Confirmation No.: 6268

Filed: December 27, 2000

For: Method and System for Pricing a  
Programming Event Viewed by  
Subscriber Group

Group Art Unit: 2611

Examiner: Ngoc K. Vu

MAIL STOP APPEAL BRIEF - PATENTS  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

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October 31, 2006  
Date

  
David M. Magness

Dear Sir:

REPLY BRIEF

Applicants submit this *Reply Brief* to the *Board of Patent Appeals and Interferences* in response to the *Examiner's Answer* dated September 8, 2006, (hereinafter *Examiner's Answer*). While Applicants' maintain each of the arguments submitted in Applicants' previously submitted *Appeal Brief*, Applicants make the following further arguments in light of the *Examiner's Answer*. Please charge any additional fees that may be required to make this *Reply Brief* timely and acceptable to Deposit Account No. 09-0465 / ROC920000234US1.

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## ARGUMENT

**I. THE EXAMINER ERRED IN REJECTING CLAIMS 1-4, AND 6-31 UNDER 35 U.S.C. § 103(a) AS BEING UNPATENTABLE OVER BONOMI ET AL (US 6,769,127 B1) IN VIEW OF PALLAKOFF (US 6,269,343 B1)**

### *The Current Objection*

Claims 1-4 and 6-31 under 35 U.S.C. 103(a) as being unpatentable over *Bonomi* et al (US 6,769,127 B1) in view of *Pallakoff* (US 6,269,343 B1)

### *The Examiner's Arguments*

On pages 5-6 of the *Examiner's Answer*, the Examiner provides elaboration with respect to the Examiner's previously submitted arguments, suggesting that Applicants' arguments are not persuasive. In response, Applicants respectfully maintain that each of the arguments presented in Applicants' *Appeal Brief* are correct, and further provide the following arguments in response to the Examiner's clarifications.

### *Pallakoff Does Not Teach the Subject Matter Asserted by the Examiner*

In the Examiner's "Response to Argument" section (*Examiner's Answer*, Pg. 9, Para. 2), the Examiner maintains the position that "*Pallakoff* teaches the feature of a discounted price according to a threshold number of buyers".

First, with respect to the Examiner's assertion that Applicants have attempted to argue against the references individually (*Examiner's Answer*, Pg. 8, Para. 4), Applicants note that the references, when combined, must teach or suggest all claim limitations. The Examiner has already admitted that "*Bonomi* does not disclose the feature of a discounted price" (and Applicants agree) and suggests that *Pallakoff* does disclose the claimed subject matter. *Examiner's Answer*, Pg. 9, Paras. 1-2. Accordingly, by the Examiner's own admission, only *Pallakoff* is relevant to the issue of teaching "a lower price for the purchase order if the program has been purchased by a threshold number of subscribers belonging to a subscriber" (*Examiner's Answer*, Pg. 9,

Para. 1). Applicants position, then, is that neither *Pallakoff* nor *Bonomi* teach the element in question.

*Price in Pallakoff is Based on Aggregate Demand*

With respect to *Pallakoff*, Applicants respectfully submit that the Examiner continues to misconstrue the reference. As admitted by the Examiner, *Pallakoff* teaches prices which depend on the "aggregate amount of goods or services" as stated in the Abstract of *Pallakoff*. Accordingly, price calculations in *Pallakoff* are based on aggregate demand, which is not a function of a number of buyers. For example, as depicted in Figure 3, Item 37, "price [is] determined based on aggregate demand." With respect to the Examiner's assertion that the number of buyers is used to determine price, *Pallakoff* is clear in stating that aggregate demand (e.g., the total volume or number of units desired by all potential buyers, Figure 6, Item 68), and not the number of buyers, is used to calculate price.

The price calculation in *Pallakoff* can be seen for example, in Column 7, Lines 31-46 where aggregate demand is calculated as the number of balls purchased by a group of buyers. As explicitly described at Column 8, Lines 27-40, the aggregate demand - and not the number of buyers - is used to calculate the ultimate price. Thus, the cited section, describing the calculation of price, makes no reference to the number of buyers. See *Pallakoff* at Column 8, Lines 27-40. Other sections cited by the Examiner (see, for example, Column 11, Lines 15-24, cited in the Examiner's Answer, Pg. 10, Para. 1) similarly make it clear that when determining price, aggregate demand, and not the number of buyers is used to determine price. Accordingly, *Pallakoff*, alone or in combination with *Bonomi*, does not teach, show, or suggest determining a first price for the purchase order if the program has been purchased by a threshold number of subscribers belonging to the subscriber group and determining a second price, higher than the first price, if the program has not been purchased by the threshold number of subscribers belonging to the subscriber group.

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***The Buying Team in Pallakoff is not a Subscriber Group Because a Buyer in "Pallakoff" is Different From a "Subscriber" as Described in the Pending Claims***

As previously described by Applicants, in *Pallakoff*, to become a member of the Buying Team, a customer must actually purchase an item, thereby affecting the aggregate demand for units sold (the basis for the Demand-Based Pricing in *Pallakoff*), as described above. See *Pallakoff* at Col. 2, 28-29. Thus, in *Pallakoff*, members of the Buying Team must (by definition) be purchasers and cannot "elect to purchase or not purchase". Accordingly, *Pallakoff* does not teach that "each subscriber belonging to the subscriber group may elect to purchase or not purchase the program".

However, the Examiner argues that the pending claims do not recite that each subscriber belonging to the subscriber group may elect not to purchase the program "because of the term 'or'". *Examiner's Answer*, Pg. 10, Paras. 2-3. However, Applicants submit that the claim language is clear: "each subscriber belonging to the subscriber group may elect to purchase or not purchase the program". Thus, in the pending claims, each subscriber may elect one option (purchasing) or another option (not purchasing). The Examiner's reading of the claim effectively renders meaningless the explicit recitation that a subscriber has the power to "elect", as election requires at least two options to choose from, and those two options are specifically recited in the claim. In fact, even removing the explicit limitation of electing not to purchase, as done by the Examiner, the meaning of the claim language is essentially unchanged because electing to purchase presumes the alternative of electing not to purchase (otherwise no election has been made). Accordingly, *Pallakoff* does not teach the subject matter asserted by the Examiner.

***Bonomi Does not Teach a Subscriber Group***

In the previous *Final Office Action*, the Examiner stated that *Bonomi* teaches a subscriber group at Figures 7A & 8C and Col. 24, Lines 56-67. See *Final Office Action*, Pg. 2, Para. 3. As described on Page 11 of the *Examiner's Answer*, the Examiner has construed the term "subscriber group" as "two or more subscribers". *Examiner's Answer*, Pg. 11, Para. 1. In this case, the Examiner has misconstrued the term

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"subscriber group" by omitting language from the pending claims and by failing to distinguish between a mere "subscriber" and a "subscriber group". For example, in Claim 1, a subscriber group is *"defined by two or more subscribers, wherein each subscriber belonging to the subscriber group maintains an independent account with the programming provider whereby the subscriber pays the programming provider in order to receive paid for programming, and wherein each subscriber belonging to the subscriber group may elect to purchase or not purchase the program"*. Thus, with respect to the Examiner's provided examples, a mere list of customers is not a subscriber group because the customers are not identified as being part of an explicit "subscriber group". See *Bonomi*, Figure 12A. Similarly, a family is not a "subscriber group" because the individual members of the family are not each subscribers that *"maintain an independent account with the programming provider"*. See *Bonomi*, Col. 36, Lines 20-38. Accordingly, Applicants respectfully submit that the Examiner has misconstrued the claims and the *Bonomi* reference. *Bonomi* does not teach the subject matter indicated by the Examiner. Withdrawal of the rejection is respectfully requested.

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### Conclusion

In conclusion, the cited reference does not teach, show or suggest all of the limitations of the present claims. Accordingly, Applicants respectfully request withdrawal of the rejection of the claims.

Respectfully submitted, and  
**S-signed pursuant to 37 CFR 1.4,**

/Gero G. McClellan, Reg. No. 44,227/

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